

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DUKE ENERGY)	
KENTUCKY, INC. FOR (1) AN ADJUSTMENT OF)	
ELECTRIC RATES; (2) APPROVAL OF NEW)	CASE NO.
TARIFFS; (3) APPROVAL OF ACCOUNTING)	2022-00372
PRACTICES TO ESTABLISH REGULATORY)	
ASSETS AND LIABILITIES; AND (4) ALL OTHER)	
REQUIRED APPROVALS AND RELIEF)	

ORDER

On December 1, 2022, Duke Energy Kentucky, Inc. (Duke Kentucky) filed a petition, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, requesting that the Commission grant confidential protection for 20 years for the following items provided in its application: Budget Guidelines and Assumptions;¹ Financing Reporting Summaries (FRS), including monthly managerial reports and its monthly Regulatory O&M and Capital Reports;² Direct Testimony of Amy Spiller, Attachments ABS 1 and ABS 3; Direct Testimony of Paul Halstead, Attachments PLH 2 and PLH 3; Direct Testimony of Jake Stewart Attachments JSS 3(a), 3(b), and 3(c); and Direct Testimony of Bruce Sailors, Attachments BLS 3, BLS 4, BLS 6, and BLS 8.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as

¹ Application, Filing requirement 16(7)(c) (filed Dec. 15, 2023).

² Application, Filing requirement 16(7)(o).

otherwise provided by KRS 61.870 to 61.884.”³ Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.⁴ The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.⁵ KRS 61.878(1)(c)(1) provides an exception to the requirement for public disclosure of records that are “generally recognized as confidential and proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records.”⁶

Duke Kentucky requested confidential treatment for certain information and attachments provided in its application more fully discussed below, arguing that the attachments should be exempt from public disclosure pursuant to KRS 61.878(1)(c)(1).

Duke Kentucky provided its Budget Guidelines and Assumptions. Duke Kentucky argued that this information should be granted confidential treatment because the attachment is proprietary and includes labor inflation rates.

Duke Kentucky provided FRS that included monthly manager reports that contain narrative explanations of variances for Duke Kentucky and show the financial condition of the Company on a monthly basis. The information included its monthly Regulatory O&M and Capital Reports (ROCR) that contain highly detailed variance descriptions and explanations for O&M and capital expenditures, respectively. Duke Kentucky argued that

³ KRS 61.872 (1)

⁴ See KRS 61.871.

⁵ 807 KAR 5:001, Section 13(2)(c).

⁶ KRS 61.878(1)(c)(1).

this information should be granted confidential treatment because the Commission afforded similar information confidential treatment in Case No. 2021-00190.⁷

Duke Kentucky provided the Direct Testimony of Amy Spiller, Attachment ABS 1, a customer satisfaction survey, which contained a one-page chart for the years of 2018-2021 with categories passive, detractors, and promoters. Duke Kentucky argued in its petition that “[t]his document provides a summary of customer satisfaction performance measures during that timeframe on a net basis by comparing the share of Promoters (customers providing a score of ‘9’ or ‘10’ on a ‘0-10’ scale) to the share of Detractors (customers providing a score of ‘0-6’ on a ‘0-10’ scale).”⁸

Duke Kentucky provided the Direct Testimony of Amy Spiller, Attachment ABS 3, a FastTrack summary, which was created based on customer satisfaction specifically for Duke. Duke Kentucky argued that this was the results of proprietary studies that were developed by and for the company. Duke Kentucky argued that if this information were to be released, it would provide sensitive information regarding Duke Kentucky’s inner workings and its customers’ experiences. Duke Kentucky argued that it also would allow trade secret information developed and paid for by Duke Kentucky to be available to Duke Kentucky’s competitors without them having to develop and purchase that information themselves.

Duke Kentucky included attachments from the Direct Testimony of Paul Halstead, Attachments PLH 2 and PLH 3. Duke Kentucky provided information relating to a model

⁷ Case No. 2021-00190, *In the Matter of: Elec. Application of Duke Kentucky for: 1) an Adjustment of the Nat. Gas Rates; 2) Approval of New Tariffs, & 3) All Other Required Approvals, Waivers, & Relief*, (Ky. PSC Dec. 13, 2021), Order.

⁸ Petition of Duke Kentucky for Confidential Treatment of Information Contained in its Application Regarding and Adjustment of Electric Rates (filed Dec. 1, 2022) at 3.

of incremental revenue requirement for the new Clean Energy Connection (CEC) program, as well as a cost benefit analysis of the program. Attachment PLH 2 contains both tax rates, insurance rates, and other tax information, including tax credits. Attachment PLH 3 contains a yearly net program value as well as a cost and cost savings analysis. Duke Kentucky argued that this information should be granted confidential treatment because, if disclosed, there would be a competitive disadvantage to Duke Kentucky, and it would allow competitors access to proprietary information without having to develop and purchase the information themselves.

Four items were attachments to the Direct Testimony of Bruce Sailors. In Attachment BLS-3, Duke Kentucky provided the monthly rate for LED Equipment, new LED Equipment, useful life price breakdowns including labor costs, fixtures costs, and pole and bracket expenses based on information from vendors. In Attachment BLS-4, Duke Kentucky provided information that contains the LEG workpapers for the LED maintenance calculations. For both items, Duke Kentucky argued that vendors' pricing of certain equipment, services, and labor is confidential, as gaining access to this information would be extremely valuable to the both the Duke Kentucky's competitors and its vendors' competitors. Duke Kentucky also argued that releasing this information would put it at a competitive disadvantage and potentially limit Duke Kentucky in negotiations with other business partners in the future.

In Attachment BLS-6, Duke Kentucky provided workpapers for the calculation of a remote reconnection fee. In Attachment BLS-8, Duke Kentucky provided the workpapers for the rate design for rate EVSE. For both items, Duke Kentucky argued that releasing the information would put Duke Kentucky at a competitive disadvantage and potentially

limit Duke Kentucky and its vendors in negotiations with other business partners in the future.

In addition, Duke Kentucky provided Attachment JJS 3(a) 2022 Short-Term Incentive Plan and Union Employee Incentive Plans, Attachment JJS 3(b) 2022 Short-Term Incentive Scorecard, and Attachment JJS 3(c) 2022 Executive Long-Term Incentive Plan, attachments submitted as part of the Direct Testimony of Jake Stewart. Duke Kentucky argued that such information would offer competitors insight into the Duke Kentucky's compensation philosophies, policies, and practices. Duke Kentucky argued that, taken together, these documents represent the accumulation of decades of "best practices" in human capital management. The information that would be extremely valuable to the Duke Kentucky's competitors.

Having considered the petition and the material provided in Duke Kentucky's application, the Commission finds that Duke Kentucky's petition should be granted in part and denied in part. The Commission finds that the designated material contained in FRS monthly managerial reports and its monthly Regulatory O&M and Capital Reports; Direct Testimony of Amy Spiller Attachment, ABS 3; Direct Testimony of Paul Halstead, Attachments PLH 2 and PLH 3; Direct Testimony of Jake Stewart, Attachments JJS 3(a) and 3(b); and Direct Testimony of Bruce Sailors Attachments, BLS 3, BLS 4, BLS 6, and BLS 8 are records that meet the criteria for confidential treatment and should be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13. The Commission has previously ruled that the above items should be afforded

confidential treatment, apart from the Direct Testimony of Amy Spiller, Attachment ABS 3.⁹

FRS monthly managerial reports and its monthly Regulatory O&M and Capital Reports, which related to FRS monthly manager reports, should be granted confidential treatment in accordance with prior precedent.¹⁰ FRS contains the assets, revenues, and expenses, on a monthly basis, for the company that could be used to adversely affect the company by competitors and investors.

The Direct Testimony of Amy Spiller, Attachment ABS 3, a 2021 FastTrack study, should be granted confidential treatment because it contains information compiled for Duke Kentucky, that should competitors be able to use it, may disadvantage Duke Kentucky in the marketplace.

The Direct Testimony of Paul Halstead, Attachments PLH 2 and PLH-3, which related to the model incremental revenue requirement for the proposed CEC program as well as a cost benefit analysis of the program, should be granted confidential treatment because the information contained includes tax information that would garner confidential treatment in and of itself. The attachments contain insight into how Duke Kentucky values certain aspects of the program as well as the possibility of program savings. Public disclosure of the valuations contained in the attachments would disadvantage Duke Kentucky in the marketplace.

The Direct Testimony of Jake Stewart, Attachment JJS 3(a) 2022 Short-Term Incentive Plan and Union Employee Incentive Plans should be granted confidential

⁹ Order (Ky. PSC Oct. 24, 2023).

¹⁰ Case No. 2021-00190, Dec. 31, 2021 Order.

protection because it contains information related to union and non-union employees' incentives, which were similarly granted confidential treatment in the past.¹¹ Additionally, this information does not contain any reference to executive salary incentive, for which generally the Commission does not grant confidential treatment.

The Direct Testimony of Jake Stewart Attachment, JJS 3(b) 2022 Short-Term Incentive Scorecard should be granted confidential treatment because this information is proprietary to Duke Kentucky and disclosure of such information would disadvantage Duke Kentucky in the labor market should competitors use this information to lure employees away.

The information provided in Attachment 1 as it relates to the Direct Testimony of Bruce Sailors, Attachments BLS-3, BLS-4, BLS-6, and BLS-8, should be granted confidential treatment because the same information, provided in response to Commission Staff's First Request for Information, Item 56, and has been granted confidential treatment.¹²

The Commission finds that the request for confidential treatment should be denied for the Budget Guideline and Assumptions; the Direct Testimony of Amy Spiller, Attachment, ABS 1; and for the Direct Testimony of Jake Stewart Attachment, JJS 3(c). In the Budget Guidelines and Assumptions, Duke Kentucky failed to provide specific grounds for why the entire document should be granted confidential treatment. Therefore,

¹¹ Case No. 2021-00190, Dec. 31, 2021, Order.

¹² Case No. 2022-00372, *In the Matter of: Electronic Application of Duke Kentucky for (1) Adjustment of Electric Rates; (2) Approval of New Tariffs; (3) Approval of Accounting Practices to Establish Regulatory Assets and Liabilities; and (4) All Other Required Approvals and Relief*, (Ky. PSC February 10, 2023), Order at 6.

the Budget Guideline and Assumptions do not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Direct Testimony of Amy Spiller, Attachment ABS 2, the customer satisfaction survey, contained no information as to what the customers were asked, who the customers were, and the document does not contain the scale provided in the motion. Therefore, the Direct Testimony of Amy Spiller, Attachment ABS 2 does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

The Direct Testimony of Jake Stewart, Attachment JJS 3(c), which was the 2022 Executive Long-Term Incentive Plan, was generally published at the annual shareholders' meeting in March 2023; therefore, the Direct Testimony of Jake Stewart, Attachment JJS 3(c), does not meet the criteria for confidential treatment and should not be exempted from public disclosure pursuant to KRS 61.878(1)(c)(1) and 807 KAR 5:001, Section 13.

IT IS THEREFORE ORDERED that:

1. Duke Kentucky's petition for confidential treatment for certain attachments provided in Duke Kentucky's application is granted in part and denied in part.

2. Duke Kentucky's petition for confidential treatment for FRS, including monthly managerial reports and its monthly Regulatory O&M and Capital Reports; Direct Testimony of Amy Spiller Attachment, ABS 3; Direct Testimony of Paul Halstead Attachments, PLH 2 and PLH 3; Direct Testimony of Jake Stewart Attachments, JSS 3(a) and 3(b); and Direct Testimony of Bruce Sailors, Attachments BLS 3, BLS 4, BLS 6, and BLS 8 is granted.

3. Duke Kentucky's petition for confidential treatment for Budget Guideline and Assumptions; The Direct Testimony of Amy Spiller, Attachment ABS 1; and for the Direct Testimony of Jake Stewart, Attachment JJS 3(c) is denied.

4. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for 20 years, except for the Direct Testimony of Bruce Sailors, Attachments BLS 6 and BLS 8 in which the attachments shall not be placed in the public record or made available for public inspection for 2 years, or until further order of this Commission.

5. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

6. Duke Kentucky shall inform the Commission if the designated material granted confidential treatment becomes publicly available or no longer qualifies for confidential treatment.

7. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If Duke Kentucky is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

8. The Commission shall not make the requested material for which confidential treatment was granted available for inspection for 30 days from the date of

service of an Order finding that the material no longer qualifies for confidential treatment in order to allow Duke Kentucky to seek a remedy afforded by law.

9. The designated material denied confidential treatment by this Order is not exempt from public disclosure and shall be placed in the public record and made available for public inspection.

10. If Duke Kentucky objects to the Commission's determination that the requested material not be granted confidential treatment, it must seek either rehearing pursuant to KRS 278.400 or judicial review of this Order pursuant to KRS 278.410. Failure to exercise either of these statutory rights will be deemed as agreement with the Commission's determination of which materials shall be granted confidential treatment.

11. Within 30 days of the date of service of this Order, Duke Kentucky shall file a revised version of the designated material for which confidential treatment was denied, reflecting as unredacted the information that has been denied confidential treatment.

12. The designated material for which Duke Kentucky's request for confidential treatment has been denied shall neither be placed in the public record nor made available for inspection for 30 days from the date of service of this Order to allow Duke Kentucky to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

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KENTUCKY PUBLIC SERVICE COMMISSION
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